

Ronald Smith appeals the revocation of his probation. Smith raises one issue, which we revise and restate as whether there is sufficient evidence to support Smith's probation revocation. We affirm.

The relevant facts follow. On September 3, 2004, Smith pleaded guilty to two counts of child molesting as class C felonies.¹ The trial court sentenced Smith to eight years in the Department of Correction with six years suspended and four years of probation for each count. The sentences were to run concurrently. Smith was released from the Department of Correction on February 13, 2005, and began serving probation with the Allen County Community Control Program. As part of his probation, the trial court ordered Smith to "complete a certified sexual perpetrator treatment program." Appellant's Appendix at 47. Smith signed the order of probation acknowledging that his "failure to comply with or obey any of the above conditions means that I can be sent to prison." Id.

Myra Simonson, a counselor at Family and Children's Services, assessed Smith and admitted him into Phase One of the sexual perpetrator treatment program based upon his acceptance of responsibility for the crimes he committed. Smith successfully completed Phase One by attending eight weeks of group therapy. After reassessment by Simonson, Smith was admitted into Phase Two of the program, which required him to attend weekly group therapy sessions for two years. Smith attended both group and individual sessions. Simonson was Smith's individual counselor.

¹ Ind. Code § 35-42-4-3 (2004).

Participants in the sexual perpetrator program are asked to “take some level of responsibility” prior to admittance into Phase I, and Smith complied. Transcript at 11. However, it is important for an offender to accept responsibility throughout the program in order to be successful in its completion. Based on the results of a polygraph examination, which indicated deception on Smith’s part, and her last session with Smith, Simonson concluded that “acceptance of responsibility may not have been happening.” Id.

On November 10, 2005, Simonson met with Smith and his wife after Simonson received the results of the polygraph examination. Smith listed his wife as his support person. However, Smith had not informed his wife of his “safety plan.”² Further, Smith’s wife expressed to Simonson that she did not believe Smith was guilty of the child molesting charges. Prior to this session, Smith had “made the appropriate admissions that yes, he committed the offenses for which he was in counseling for.” Id. at 15. However, at this session, both Smith and his wife denied Smith’s offenses. Simonson reminded Smith of his previous admission, but he continued to deny the offenses. After Simonson asked Smith’s wife to leave the session, Smith continued to deny the offenses. Simonson viewed Smith’s denial as “a setback from his previous position in counseling.” Id. at 16. She “encouraged him to continue to attend group counseling . . . and process what had just happened in the individual session” Id. In addition, Simonson

² We cannot tell from the record what the “safety plan” was.

reported what happened at this counseling session to the treatment team, the executive director, and the clinical director of the program.

At his subsequent group therapy session, Smith expressed his extreme anger at Simonson, continuously referring to her as a “bitch.” Id. at 35-36. In addition, Smith filed two grievances with the executive director: “one complaining about the treatment he received and the other complaining about the treatment his wife received at the counseling session with Simonson.” Id. Based on the events that happened at his last individual session with Simonson and his behavior at the subsequent group session, the treatment team decided to terminate Smith from the program primarily based on the fact that he denied the offense. Id. at 37-38. A notice of termination was sent to Smith and his probation officer. Id. A Verified Petition for Revocation of Probation was filed on November 17, 2005, stating that Smith “did not successfully complete sexual perpetrator counseling.” Appellant’s Appendix at 58. “The trial court found by a preponderance of the evidence that Smith violated his probation and that a re-referral to the treatment program “would be a waste of everybody’s effort.” Transcript at 62. The trial court “revoked Smith’s probation and ordered him to serve his suspended sentence of six years minus time served.” Id.

The issue is whether there is sufficient evidence to support Smith’s probation revocation. “A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence.” Podlusk v. State, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005) (citing Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999)). “A trial court’s decision to revoke probation is reviewed for an abuse of

discretion.” Id. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh’g denied. Rather, we consider “the evidence most favorable to the probation court’s judgment and determine whether there is substantial evidence of probative value supporting revocation.” Marsh v. State, 818 N.E.2d 143, 148 (Ind. Ct. App. 2004). “If so, we will affirm.” Id.

Smith argues that, because he “steadfastly acknowledged his responsibility both prior to and after the November 10, 2005 individual counseling session” with Myra Simonson, “he should receive the benefit of the Court’s rationale inof [sic] the Gilfillen [v. State, 582 N.E.2d 821 (Ind. 1991)] decision.” Appellant’s Brief at 10. Smith’s reliance on Gilfillen is misplaced. There, a jury convicted Gilfillen of child molesting and incest and sentenced him to eight years with three suspended. Gilfillen, 582 N.E.2d at 822. He was ordered to serve two years probation. Id. As a condition of his probation, Gilfillen was ordered to undergo sexual abuse counseling, which required him to admit that he had a sexual abuse problem. Id. at 823. Gilfillen refused to admit that he had a sexual abuse problem. Id. In fact, Gilfillen “denied his guilt throughout his trial, sentence, and probation.” Id. Though he attended the ordered counseling sessions, Gilfillen used them as a platform to insist on his innocence. Id. Gilfillen’s probation officer filed a notice of probation violation. Id. “At the revocation hearing, the trial court found that Gilfillen had violated the conditions of his probation because he had not made a good faith effort to work on his sexual abuse problem and he had twice failed to complete a counseling program.” Id. The Court of Appeals affirmed the revocation. Id.

On transfer, the Indiana Supreme Court reversed, holding that “requiring Gifillen to admit that he has a problem with child molesting or face revocation of probation is tantamount to requiring that he admit that he is guilty of the crimes charged.” Id. at 824.

In the present case, Smith pleaded guilty to the child molest charges against him, admitting that he committed the offenses. Gifillen, on the other hand, never admitted that he committed the charged offenses.

As a part of his guilty plea, Smith signed the trial court’s Addendum Order of Probation acknowledging that “failure to comply with or obey any of the above conditions means that I can be sent to prison.” Appellant’s Appendix at 47. Condition number three of the Addendum stated, “You will complete a certified sexual perpetrators treatment program that utilizes polygraph testing in order to ensure compliance with the addendum order of probation.” Id. The treatment program required that Smith accept responsibility for his offenses and admit his sexual wrongdoing. In his last individual session with Simonson, Smith denied his guilt and refused to accept responsibility for his offenses. Additionally, results of a polygraph examination given to Smith indicated deception. Based on the results of the polygraph examination and the counseling session with Simonson, Smith was terminated from the program. Smith’s termination from the program meant that he did not successfully complete the sexual perpetrator counseling, a requirement of his probation. Further, Smith testified during the hearing on the petition for revocation that he had been telling Simonson “what she wanted to hear.” Id. at 71.

Because Smith did not complete the required sexual abuse counseling program, a condition of his probation, there was sufficient evidence for the trial court to revoke his

probation. See, e.g., Lind v. State, 550 N.E.2d 823, 824 (Ind. Ct. App. 1990) (holding that the trial court did not erroneously revoke defendant's probation where defendant failed to adhere to the program's rules).

For the foregoing reasons, we affirm Smith's probation revocation.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur